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HIGH COURT OF CHHATTISGARH, BILASPUR

ARB. R. No. 3 of 2018

Capital Transformers Private Limited Having Its Registered Office At B-40 Jhilmil Industrial Area, Shahdara, Delhi- 110095. Through : Its Director Bhupendra Kumar Goyal, S/o. Jangumal Goyal, Age 49 years, R/o A- 159 Vivek Vihar Phase II, Shahadara Delhi- 95.

---- Applicant

Versus

Chhattisgarh State Power Distribution Power Company Limited, through : Its, Managing Director, having Its Registered Office At Vidyut Sewa Bhawan, 4th Floor, Daganiya, Raipur- 492013.

-----Respondent

For Applicant	: Mr. Anand Mohan Tiwari, Advocate
For Respondent	: Mr. K.R. Nair, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

11/04/2019

1. Application has been brought under Section 11 (5) & (6) of the Arbitration and Conciliation Act, 1996 (in short 'the Act, 1996') read with Section 151 of C.P.C. for appointment of presiding arbitrator.
2. It is submitted that the applicant is company engaged in manufacturing and repairing of the transformers. The applicant received an order for supply of transformers in the year 2010

according to the specifications and accordingly supply of transformers were made and in total 100% was made to the respondent in the year 2011. However, the respondent made payments after deducting penalty for late delivery.

3. Despite various representations, the respondent did not withdraw the penalty, therefore, the applicant filed a Writ Petition (C) No.1855/2013, before this Court, in which by order dated 17.12.2013, this Court ordered the respondent to decide the representation of the petitioner. The petitioner filed a repeat representation but the same was rejected by the respondent. Subsequent to that, applicant again filed W.P.(C) No.842/2015 before this Court in which this Court by order dated 13.05.2015 observed that intricacies of the contract can not be examined in writ jurisdiction and the petitioner was advised to invoke the arbitration clause. Thereafter, the applicant vide notice dated 08.07.2015 sent a notice, through Advocate to the respondent nominating Mr. Ashok Trivedi, Advocate, as arbitrator in accordance with arbitration clause in the agreement. Respondent vide its letter dated 01.08.2015, nominated Mr. Arvind Shrivastava, retired District and Sessions Judge as its arbitrator. According to the arbitration clause, two arbitrators appointed by both the parties were required to nominate the presiding arbitrator, but by passing of time, both the arbitrators have failed to nominate any presiding officer so far, therefore, it is prayed that this Court may be pleased to appoint the presiding arbitrator.

4. Counsel for the respondent in reply admits about the dispute existing between the parties and submits that arbitrators on behalf of the parties were appointed in the year 2015 and they have failed to appoint any presiding arbitrator so far. The arbitrators had time to appoint a presiding officer within 30 days and this time may have been extended to further 18 months, subsequent to that further extension could have been granted only by a Court. It is also submitted that this Court may give direction to arbitrators to appoint a presiding arbitrator or looking to this fact that both the arbitrators have failed to perform, therefore, a sole arbitrator can also be appointed in this case.
5. According to the general instructions to bidders/tenders, which is not in dispute between the parties, the arbitration clause is as under :-

“26. ARBITRATION

If at any time, any question, dispute or difference, whatsoever shall arise between the Purchaser and the supplier, upon or in relation to or in connection with the Contract, either party may forth with give to the other, notice in writing of the existence of such question, dispute or difference and the same shall be referred to the adjudication of two arbitrators, one to be nominated by the Purchaser and the other to be nominated by the supplier or in the case of said arbitrators not agreeing, then to the adjudication of the Umpire to be appointed by the arbitrators, whose decision shall be final and binding on the parties and the provisions of the Indian

Arbitration Reconciliation Act, 1996, and of the rules there under and any statutory modification thereof shall be deemed to apply. The arbitrators or the Umpire, as the case may be, are bound to give a detailed speaking award assigning reasons for the findings.

Supplies under the contract shall be continued by the Contractor during the arbitration proceedings, unless otherwise, directed in writing by the Purchaser or unless the matter is such that the work cannot possibly be continued until the decision of the arbitrators or of the Umpire, as the case may be is issued.”

6. There is no dispute that two arbitrator appointed by both the parties have failed to appoint third arbitrator as presiding arbitrator within a period of 30 days.
7. Section 11 (4) of the Act, 1996 provides that on such failure, upon request of the parties to Chief Justice, the Chief Justice or the persons designated by him shall make the appointment. Therefore, Section 11 (4) of the Act, 1996 is not a disqualifying clause, though reference has been made belatedly even then I am of this view that appointment can be made.
8. Therefore, on the basis of discussions made hereinabove, this conclusion is arrived at, that it is fit case for exercise of power under Section 11(6) of the Act, 1996. Therefore, by exercising power under Section 11 (6) of the Act, 1996 under the authority given by Hon'ble the Acting Chief Justice, I hereby appoint Hon'ble Shri Justice V.K. Shrivastava, former Judge of this High

Court to arbitrate the dispute between the parties. Registry is directed to communicate this order to Hon'ble Shri Justice V.K. Shrivastava, who shall enter into reference after complying with the provisions contained in Section 12 (2) of the Act, 1996. Learned arbitrator is requested to dispose off the matter within the time prescribed in the Act, 1996 as amended.

9. The remuneration of the arbitrator shall be settled by the parties with the mutual consent.
10. The petition is disposed off with the aforesaid directions.

Sd/-
(Rajendra Chandra Singh Samant)
Judge